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SUPREME COURT. U. S.

IN THE

Supreme Court of the United States

October Term, 1957.

No. 117.

DORA STEWART LEWIS, MARY WASHINGTON
STEWART BORIE and PAULA BROWNING
DENCKLA,

Petitioners.

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, Deceased, et al.,

Respondents.

On Writ of Certiorari to the Supreme Court of the State
of Delaware.

PETITION FOR REHEARING.

ARTHUR G. LOGAN,
AUBREY B. LANK,
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*Attorneys for Dora Stewart Lewis,
Mary Washington Stewart Borie
and Paula Browning Denckla,
Petitioners.*

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No. 117.

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE
and PAULA BROWNING DENCKLA,

Petitioners,

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee
Under the Last Will of Dora Browning Donner, De-
ceased,

WILMINGTON TRUST COMPANY, a Delaware Corporation, as
Trustee Under Three Separate Agreements, (1) and
(2) With William H. Donner Dated March 18, 1932 and
March 19, 1932, and (3) With Dora Browning Donner
Dated March 25, 1935,

DELAWARE TRUST COMPANY, a Delaware Corporation, as
Trustee Under Three Separate Agreements; (1) With
William H. Donner Dated August 6, 1940, and (2) and
(3) With Elizabeth Donner Hanson, Both Dated No-
vember 26, 1948,

KATHERINE N. R. DENCKLA,

ROBERT B. WALLS, JR., ESQUIRE, Guardian ad Litem for
Dorothy B. R. Stewart and William Donner Denckla,

ELWYN L. MIDDLETON, Guardian of the Property of Dorothy
B. R. Stewart, a Mentally Ill Person,

EDWIN D. STEEL, JR., ESQUIRE, Guardian ad Litem for
Joseph Donner Winsor, Curtin Winsor, Jr., and Don-
ner Hanson,

BRYN MAWR HOSPITAL, a Pennsylvania Corporation, MIRIAM
V. MOYER, JAMES SMITH, WALTER HAMILTON, DOROTHY
A. DOYLE, RUTH BRENNER and MARY GLACKENS,

LOUISVILLE TRUST COMPANY, a Kentucky Corporation, as
Trustee for Benedict H. Hanson, and as Trustee Under
Agreements With William H. Donner,

WILLIAM DONNER ROOSEVELT, JOHN STEWART and
BENEDICT H. HANSON,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF DELAWARE.

PETITION FOR REHEARING.

The petitioners respectfully submit that they have been aggrieved by the judgment or decision of this Court rendered on June 23, 1958, and petition for a rehearing of said matter.

The grounds of this petition are as follows:

1. This Court erred in holding in *Hanson v. Denckla*, Case No. 107, that the Florida Supreme Court did not have jurisdiction to enter the judgment from which the appeal was taken. The appellees in Case No. 107 have filed a Petition for Rehearing in that case and petitioners herein incorporate by reference the grounds set forth in said Petition for Rehearing in Case No. 107. In the event this Court grants the Petition for Rehearing in Case No. 107, then this Court should grant this Petition for Rehearing, because in the joint opinion delivered on June 23, 1958, in this case and in Case No. 107, the affirmance of the judgment of the Delaware Supreme Court in this case was based upon the reversal of the judgment of the Florida Supreme Court in Case No. 107.

2. In the majority opinion in this case this Court said, "Since Delaware was entitled to conclude that Florida law made the trust company an indispensable party, it was under no obligation to give the Florida judgment any faith and credit—even against parties over whom Florida's jurisdiction was unquestioned". This decision, if not reversed, creates an anomalous situation. This Court has held in effect that the dispute resolved by the Florida Courts between Florida residents is not binding on them because the Delaware trustees (stakeholders) did not choose to enter an appearance and be heard in Florida. On the other hand, the ruling of this Court is that certain of the Florida residents who were parties in the Florida proceedings, but who did not choose to have their rights relitigated in Dela-

ware and, therefore, did not appear and be heard, are bound by the Delaware judgment. Defendants, Katherine N. R. Denckla and Elwyn L. Middleton, Guardian of the Property of Dorothy B. R. Stewart, a Mentally Ill Person, were not served and did not appear in Delaware (A196). These parties whose rights were adjudicated in Florida where they appealed are now told that the decision of their own state is a nullity, but that the decision of a foreign state is binding against them even though they did not appear. The result of the decision of this Court of June 23, 1958, destroys the concepts that full faith and credit and due process are based upon principles of equity and justice. Federal law should not allow the result which will be created if the Petition for Rehearing in this case and the Petition for Rehearing in Case No. 107 are not granted and a different decision reached.

3. We submit that a majority of the members of this Court concluded that the so-called trust agreement was not a true trust, but instead an agency agreement. If so, then we submit that the Florida Court had jurisdiction over the Delaware trustees, under the rule upheld by this Court on July 1, 1958, in denying the appeals in *Columbia Broadcasting System, Inc. v. Atkinson*, No. 756; *Radio Corporation of America v. Anderson*, No. 757; and *American Federation of Musicians v. Atkinson*, No. 759. (Lower court decision, California Supreme Court, 49 A. C. 339). Furthermore, if we are correct in our belief that a majority of the members of this Court were of the opinion that the trust agreement is nothing more than an agency agreement said trustees were properly brought into the Florida Court under the doctrine of *McGee v. International Life Insurance Co.*, 355 U. S. 220.

Could it be that there is a different rule with respect to non-resident parties when a case arises in California affecting a California resident than when a case arises in some other jurisdiction?

Certificate of Counsel

WHEREFORE, and for other reasons appearing in petitioners' briefs previously filed herein, they respectfully petition that a hearing be granted and that the issuance of the mandate of this Court be stayed pending disposition of this petition.

Respectfully submitted,

ARTHUR G. LOGAN,

AUBREY B. LANK,

400 Continental American Building,
Wilmington, Delaware,

*Attorneys for Dora Stewart Lewis,
Mary Washington Stewart Borie
and Paula Browning Denkla,
Petitioners.*

July 15, 1958.

CERTIFICATE OF COUNSEL.

I, Arthur G. Logan of 400 Continental American Building, Wilmington, Delaware, an attorney duly admitted to practice in this Court, do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

Dated, July 15, 1958.

ARTHUR G. LOGAN,

Counsel for Petitioners